

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

- - -

JASON COTTERMAN,

:

: CASE NO. 1:17-cv-608

Plaintiff,

:

: Judge William O. Bertelsman

-vs-

: Magistrate Karen Litkovitz

CITY OF CINCINNATI, et al., :

Defendants. :

- - -

Deposition of MICHELLE LONGWORTH, a witness herein,
taken by the Plaintiff as upon cross-examination and pursuant
to the Federal Rules of Civil Procedure and Notice as to time
and place and stipulations hereinafter set forth, at Lazarus
& Lewis, LLC, 915 Cincinnati Club Building, 30 Garfield
Place, Cincinnati, Ohio, on Tuesday, September 24, 2019, at
9:43 a.m., before Jane Anne Fitch, a Notary Public within and
for the State of Ohio.

ORIGINAL

FITCH REPORTING, INC.

Cincinnati: 513-777-2500 USA: 800-569-7888

<p style="text-align: right;">Page 2</p> <p>1 INDEX</p> <p>2 Witness:</p> <p>3 MICHELLE LONGWORTH</p> <p>4 Cross-Examination by: Page:</p> <p>5 Mr. Croskery 5</p> <p>6 Plaintiff's Exhibit (previously marked) Page referred:</p> <p>7 No. 23..... 74</p> <p>8 No. 29..... 22</p> <p>9 No. 30..... 37</p> <p>10 ---</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 4</p> <p>1 STIPULATIONS</p> <p>2 It is stipulated by and between counsel</p> <p>3 for the respective parties that the deposition of MICHELLE</p> <p>4 LONGWORTH, a witness herein, called as upon cross-examination</p> <p>5 by the Plaintiff may be taken at this time and place pursuant</p> <p>6 to the Federal Rules of Civil Procedure and Notice and</p> <p>7 agreement of counsel as to time and place of taking said</p> <p>8 deposition; that the deposition was recorded in stenotype by</p> <p>9 the court reporter, Jane Anne Fitch, and transcribed out of</p> <p>10 the presence of the witness; and that said deposition is to</p> <p>11 be submitted to the witness for her examination and</p> <p>12 signature.</p> <p>13 ---</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 3</p> <p>1 APPEARANCES:</p> <p>2 For the Plaintiff:</p> <p>3 Robert F. Croskery, Esq.</p> <p>4 of</p> <p>5 Croskery Law Offices</p> <p>6 3905 Eastern Avenue</p> <p>7 Suite 200</p> <p>8 Cincinnati, Ohio 45226</p> <p>9 For the Defendants:</p> <p>10 Julie F. Bissinger, Esq.</p> <p>11 of</p> <p>12 City of Cincinnati Law</p> <p>13 801 Plum Street</p> <p>14 Suite 214</p> <p>15 Cincinnati, Ohio 45202</p> <p>16 For the Witness:</p> <p>17 R. Jessup Gage, Esq.</p> <p>18 of</p> <p>19 Lazarus & Lewis, LLC</p> <p>20 915 Cincinnati Club Building</p> <p>21 30 Garfield Place</p> <p>22 Cincinnati, Ohio 45202</p> <p>23 Also present:</p> <p>24 Mr. Jason Cotterman</p> <p>25 ---</p>	<p style="text-align: right;">Page 5</p> <p>1 MICHELLE LONGWORTH,</p> <p>2 of lawful age, a witness herein, was first duly sworn as</p> <p>3 hereinafter certified, and examined and deposed as follows:</p> <p>4 CROSS-EXAMINATION</p> <p>5 BY MR. CROSKERY:</p> <p>6 Q Please state your full name.</p> <p>7 A Michelle Longworth.</p> <p>8 Q And what is your current address -- oh,</p> <p>9 wait.</p> <p>10 MR. CROSKERY: Can we get ahold of her</p> <p>11 if we need her through asking you? You will so</p> <p>12 stipulate?</p> <p>13 MR. GAGE: Yes, or through the Police</p> <p>14 Department.</p> <p>15 BY MR. CROSKERY:</p> <p>16 Q I assume you've had your deposition taken</p> <p>17 before?</p> <p>18 A I have.</p> <p>19 Q How many times?</p> <p>20 A Twice.</p> <p>21 Q And what were they in connection with?</p> <p>22 A With my employment through the Cincinnati</p> <p>23 Police Department.</p> <p>24 Q All right. Any more recollection of what</p> <p>25 specifically the first one was about?</p>

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<p>1 A One was a -- involving a traffic stop</p> <p>2 that I made, and the other one was involving a lawsuit</p> <p>3 against Children's Hospital.</p> <p>4 Q You're not a Defendant, I assume, in</p> <p>5 either one of those cases?</p> <p>6 A No.</p> <p>7 Q So, the lawsuit against Children's</p> <p>8 Hospital, about when was that?</p> <p>9 A 2008.</p> <p>10 Q How about the traffic stop?</p> <p>11 A I don't remember.</p> <p>12 Q Before the lawsuit involving the</p> <p>13 hospital?</p> <p>14 A Before.</p> <p>15 Q All right. So it's been a while since</p> <p>16 you've had your deposition taken. My guess is the rules</p> <p>17 haven't changed very much, and you've had a chance to discuss</p> <p>18 with your counsel what they are.</p> <p>19 Basically I'll be asking questions,</p> <p>20 you're answering them under oath. The court reporter on my</p> <p>21 right and your left is taking down everything that each of us</p> <p>22 says.</p> <p>23 It is important if there is some question</p> <p>24 that I have that I don't phrase well, you don't understand,</p> <p>25 just let me know, and I will be happy to rephrase it. Can</p>	<p>1 A Cincinnati.</p> <p>2 Q And what class were you in?</p> <p>3 A 89.</p> <p>4 Q There was only one class in '89, I take</p> <p>5 it?</p> <p>6 A There was only one class in 89.</p> <p>7 Q So starting with your graduation from the</p> <p>8 Police Academy, can you just briefly go through with me your</p> <p>9 history of --</p> <p>10 MR. GAGE: I'm sorry, you looked like you</p> <p>11 were --</p> <p>12 THE WITNESS: Sorry, I was in the 89</p> <p>13 academy class, I graduated in 2000.</p> <p>14 BY MR. CROSKERY:</p> <p>15 Q Oh, the 89th class? I'm sorry. Okay. I</p> <p>16 was going to say you looked remarkably young, but that's</p> <p>17 fine. 2000 was the class that you graduated in, and it was</p> <p>18 class number 89?</p> <p>19 A Correct.</p> <p>20 Q Okay. So starting with 2000 and after</p> <p>21 you graduated from the Police Academy, if you could briefly</p> <p>22 take me through your history with the Police Department, I</p> <p>23 would appreciate it.</p> <p>24 A Out of the academy, I was assigned to</p> <p>25 District 5. From District 5 I went to District 3. From</p>
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<p>1 you do that for me?</p> <p>2 A Yes.</p> <p>3 Q Also, you're doing so fine so far, just</p> <p>4 answer yes or no instead of uh-huh or huh-uh, so we get a</p> <p>5 clear record. Can you do that?</p> <p>6 A Yes, sir.</p> <p>7 Q If at any time you need a break, let me</p> <p>8 know and we will take a break as soon as we finish whatever</p> <p>9 series of questions I'm on. Fair enough?</p> <p>10 A Okay.</p> <p>11 Q Are you under any medication today that</p> <p>12 would interfere with you giving truthful, accurate testimony?</p> <p>13 A No.</p> <p>14 Q Do you know of any other reason why you</p> <p>15 could not give truthful and accurate testimony today?</p> <p>16 A No.</p> <p>17 Q What is your current job?</p> <p>18 A I am an investigator assigned to the</p> <p>19 Internal Investigations Section.</p> <p>20 Q And how long have you held that position?</p> <p>21 A Four years.</p> <p>22 Q I'm assuming that you've gone through a</p> <p>23 Police Academy?</p> <p>24 A Yes, sir.</p> <p>25 Q Which one?</p>	<p>1 District 3 I went to Criminal Investigation Section. And</p> <p>2 from Criminal Investigation Section I went to Internal.</p> <p>3 Q Can you give me the approximate dates</p> <p>4 that you were in District 5?</p> <p>5 A 2000 to 2005.</p> <p>6 Q District 3?</p> <p>7 A 2005 to -- I'm not sure, sir. I don't --</p> <p>8 Q Well, give me your best approximation.</p> <p>9 A I think I was in District 2 for about two</p> <p>10 years.</p> <p>11 Q Did you say District 2?</p> <p>12 A Or District 3 for about two years.</p> <p>13 Sorry.</p> <p>14 Q So roughly 2007? The records would show</p> <p>15 exactly --</p> <p>16 A Correct.</p> <p>17 Q -- but you had a couple of years there,</p> <p>18 and then you went to the Criminal Investigation Section --</p> <p>19 A Correct.</p> <p>20 Q -- I believe you said? What was that</p> <p>21 under, is that under headquarters or --</p> <p>22 A I don't understand your question.</p> <p>23 Q Each part of the Police Department is</p> <p>24 supervised by somebody. It is either directly under the</p> <p>25 Chief or directly under a Lieutenant Colonel, who was it</p>

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1 under?

2 A So at that time Criminal Investigation

3 Section would have been under the Investigative Assistant

4 Chief, and I do not recall who that was at that time.

5 Q Okay. Approximately, what years were you

6 there in the Criminal Investigation Section?

7 A I was there for about twelve years. So,

8 2007 until 2015 maybe. I'm not sure.

9 Q Well, that would match up, because you

10 said you had been with your current job for about four years?

11 A Correct.

12 Q All right. During any of the roles that

13 you have mentioned before you were in the Criminal

14 Investigation Section, did you work with Jason Cotterman?

15 A No.

16 Q Have you had any encounters with Jason

17 Cotterman during any of the time that you've been in the

18 Police Department, apart from the investigation that we're

19 here today about? Have you worked with him?

20 A No, sir. I have not worked with him.

21 Q Have you socialized with him?

22 A No, sir.

23 Q Did you know who he was?

24 A No, sir.

25 Q Okay. So it turns out that in your role

Page 11

1 of doing an investigation, you ended up doing some search

2 warrants and so forth on Jason's case. Before we get to

3 those, I want to find out a little bit more about what your

4 role typically is as an investigator.

5 A Okay.

6 Q Give me your job duties.

7 A My job duties at Internal?

8 Q Yes.

9 A So, I am the PO assigned to the Internal

10 Investigation Section, so I would handle any civilian cases,

11 and then I would also assist the Sergeants with their

12 investigations.

13 Q So is it fair to say that you obtained

14 direction from someone about what you're supposed to do

15 before you do it, you don't take the initiative and just do

16 investigations on your own?

17 A I do not do investigations on my own.

18 Q And if you're told to do an investigation

19 and you have something that is out of the ordinary, is that

20 something that you would check out with the supervisor?

21 A Okay. Can you repeat those questions,

22 because there was three?

23 Q If there is something out of the ordinary

24 in an investigation that you encounter, do you routinely

25 clarify what your instructions are with your supervisor, or

Page 12

1 do you take the initiative and do things on your own?

2 A I'm sorry. I'm still not sure what you

3 mean.

4 Q Well, let me give you an example.

5 A Okay.

6 Q In this case, I have taken the

7 depositions of, oh, approximately eight people, I think.

8 A Okay.

9 Q And in those, every single person I have

10 talked to has said that they're not aware of a case beyond

11 someone's recruitment records where a police officer's former

12 military records, medical records have been obtained.

13 In this case, Jason Cotterman's former

14 military Marine medical records end up being obtained by the

15 Cincinnati Police Department. And so far in the depositions

16 I've talked to people about, no one has a recollection of how

17 that happened.

18 However, in discovery, we were told that

19 you had information on it. So, that's the kind of thing I'm

20 talking about.

21 Were you directed to obtain those records

22 or did you obtain them on your own?

23 A I was not directed to obtain records,

24 sir.

25 Q All right. Tell me how it came about

Page 13

1 that you obtained those records.

2 A Through the course of the investigation,

3 there was allegations that Jason Cotterman had special

4 military background, that he was a sniper, Special Ops type

5 thing.

6 Q Who told you that Jason Cotterman had

7 been a sniper or in Special Ops?

8 A Sir, I do not remember who said it.

9 Q Well, was it one of your supervisors?

10 A No, sir.

11 Q So you heard a rumor that Jason Cotterman

12 had been in Special Ops or was a sniper?

13 A Yes.

14 Q Did he ever fulfill the role of sniper,

15 that is, was he a designated sniper for the Marines, or was

16 sniper just an additional skill identifier on his record?

17 A What do you mean?

18 Q Well, I mean, when you say sniper, it can

19 mean two things. One, there is a designated person from a

20 rifle platoon or from a company or battalion that can be

21 designated as sniper, that is their role is to fill the role

22 of sniper, or there can be someone who just happens to be a

23 good shot, a really good shot who is trained to use a sniper

24 rifle and gets an additional skill identifier of sniper

25 marksman.

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1 Which was it in Mr. Cotterman's case?

2 A I do not recall either being in his

3 military record.

4 Q So I want to make sure I understand this

5 correctly, based on something that someone said, you don't

6 remember who said it, but it was not one of your supervisors,

7 you decided it was important to get Jason's military medical

8 records because he was in Special Operations and/or was a

9 sniper, correct?

10 A That's not correct.

11 Q Then tell me what happened.

12 A Through the investigation, trying to

13 clarify or confirm that he had special training through a

14 Special Op or being a sniper, if it was reasonable that he

15 could follow through with threats that he had made.

16 Q Okay. And I think we're getting

17 somewhere. So, let's start with this.

18 What was the threat that he had made?

19 A During an interview with a Pension Board,

20 I don't exactly know what his title was, he had made some

21 threats, broad threats to members of the Cincinnati Police

22 Department to cause them harm.

23 Q Really? What did he say?

24 A I do not remember verbatim what was said.

25 Q But you're certain that he threatened to

Page 15

1 cause harm to members of the Cincinnati Police Department?

2 A Yes, sir.

3 MR. GAGE: Mr. Croskery, can we take just

4 a minute?

5 MR. CROSKERY: Sure.

6 MR. GAGE: Give us a moment. Can we go

7 off the record?

8 MR. CROSKERY: Go off the record.

9 (Whereupon, the deposition was recessed at

10 9:55 a.m.)

11 (Whereupon, the deposition was reconvened at

12 9:58 a.m.)

13 BY MR. CROSKERY:

14 Q I understand from your attorney that you

15 wanted to clarify something?

16 A Yes, sir. So, the investigation that I'm

17 referring to is when Cincinnati Police got a complaint from a

18 third party who was -- his office was in Fairfield, he was

19 something to do with the Pension Board.

20 There was an interview that he conducted

21 with Jason Cotterman, things that were said in that interview

22 were concerning to that individual. He contacted the

23 Internal Investigations Section, and that is where my

24 involvement came in.

25 That's the investigation that I was

Page 16

1 referring to.

2 Q So you're saying that the individual who

3 was interviewed up in Fairfield took it upon himself to

4 contact the Internal Investigations Section?

5 A So what I'm saying is, the person who

6 conducted the interview with Jason Cotterman --

7 Q Right. I understand.

8 A -- was concerned with things that Jason

9 Cotterman told him, and he contacted the Internal

10 Investigation Section of the Cincinnati Police to report what

11 was said in that interview.

12 Q Did he contact the Internal

13 Investigations Section, or did he contact the Police

14 Department and get referred to the Internal Investigations

15 Section?

16 A I don't know that answer.

17 Q All right. Did you speak with him?

18 A Yes.

19 Q I understand you don't remember his name

20 at the moment.

21 A I do not.

22 Q Was there an incident report that had

23 been taken?

24 A Yes.

25 Q Did you review the incident report?

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1 A Through Fairfield Police Department?

2 Q Yes.

3 A Yes.

4 Q Did the incident report state that Jason

5 made threats towards Cincinnati Police Department members?

6 A I do not recall what it said.

7 Q Well, in any case, you put in your -- in

8 your search warrant that you requested, that Jason had

9 committed a violation -- that there -- I'm sorry -- that

10 there was evidence of a violation of 2903.21 of aggravated

11 menacing. Do you remember that?

12 A I did not write a search warrant.

13 MR. GAGE: What are you referring to

14 there, Counsel?

15 Q Let me show it to you.

16 MS. BISSINGER: No copy for me?

17 MR. CROSKERY: I'm sorry.

18 MR. GAGE: That's okay, I will share with

19 you.

20 THE WITNESS: Oh, I forgot about this.

21 BY MR. CROSKERY:

22 Q Take as much time as you need to look it

23 over and let me know when you're ready to talk about it.

24 A I am reading over this. I did not even

25 remember that I wrote a search warrant, sir.

<p style="text-align: right;">Page 18</p> <p>1 Q Now that you have looked at this, though,</p> <p>2 does it refresh your recollection that you did indeed write a</p> <p>3 search warrant?</p> <p>4 A Yes, sir.</p> <p>5 Q And if I'm reading it correctly, it</p> <p>6 appears that the basis upon which you were doing the search</p> <p>7 warrant was Section 2903.21 of the Ohio Revised Code, which</p> <p>8 is aggravated menacing, correct?</p> <p>9 A Correct.</p> <p>10 Q Now, assuming that Jason Cotterman did</p> <p>11 make a threat towards Cincinnati Police Department members,</p> <p>12 can you tell me why that would fall within aggravated</p> <p>13 menacing, which appears to me at least on its face to refer</p> <p>14 to making a threat towards the individual with whom he was</p> <p>15 interviewing?</p> <p>16 A Okay. So, what is your question?</p> <p>17 Q Well, you told me earlier --</p> <p>18 A Yes.</p> <p>19 Q -- that you were doing an investigation</p> <p>20 based upon the fact that Jason Cotterman had made threats</p> <p>21 towards Cincinnati Police Department members. And we have</p> <p>22 here a window into what your thoughts were at the time that</p> <p>23 you were doing the search warrant, because you say that</p> <p>24 you're doing a search warrant, which is part of your</p> <p>25 investigation, because Jason had committed the crime of</p>	<p style="text-align: right;">Page 20</p> <p>1 members of the Cincinnati Police Department.</p> <p>2 Q All right. So, in any case, on November</p> <p>3 2nd of 2015, you used this search warrant with the</p> <p>4 investigation -- with the basis that is here on these two</p> <p>5 pages to seek information from Facebook in California,</p> <p>6 correct?</p> <p>7 A Correct.</p> <p>8 Q All right. And when you did that, how</p> <p>9 did Facebook respond?</p> <p>10 A I do not recall.</p> <p>11 Q Well, essentially gave you access to his</p> <p>12 account, right?</p> <p>13 A Okay.</p> <p>14 Q I mean, I know that Facebook --</p> <p>15 MS. BISSINGER: If you recall. She just</p> <p>16 said she didn't recall.</p> <p>17 Q Well, Facebook didn't go through and pick</p> <p>18 the stuff out that you wanted and send it to you. They gave</p> <p>19 you access to his account and then you went through and</p> <p>20 looked at what you wanted and printed it out, correct?</p> <p>21 A I don't recall. I do not remember what</p> <p>22 they --</p> <p>23 Q What would your pattern or habit normally</p> <p>24 be? I assume this is not the first Facebook request you've</p> <p>25 ever made in a search warrant?</p>
<p style="text-align: right;">Page 19</p> <p>1 aggravated menacing; can we agree on that?</p> <p>2 A Yes.</p> <p>3 Q Possibly, that that is what you were</p> <p>4 basing it on, then you were kind enough to restate the</p> <p>5 statute inside your search warrant here, correct?</p> <p>6 A Yes.</p> <p>7 Q All right. So can you show me where in</p> <p>8 the statute there is something that says a threat to other</p> <p>9 people that are not connected with the person that he was</p> <p>10 interviewing with would come under the statute of aggravated</p> <p>11 menacing?</p> <p>12 A I'm not sure what your question is, but I</p> <p>13 state here on the second page that the Fire Pension Board</p> <p>14 reported that Cotterman made verbal threats of serious</p> <p>15 physical harm directed at several members of the Cincinnati</p> <p>16 Police Department. The threats are believed to stem from his</p> <p>17 pending criminal and disciplinary investigation.</p> <p>18 Q Well, I haven't seen that in the incident</p> <p>19 report, which I've got. But did you then say that it was</p> <p>20 something verbal that was said that was not recorded in the</p> <p>21 incident report?</p> <p>22 A What I said was I don't recall what is in</p> <p>23 the incident report. What the Pension Board guy reported was</p> <p>24 that Jason Cotterman made verbal threats to cause harm,</p> <p>25 verbal threats of serious physical harm directed at several</p>	<p style="text-align: right;">Page 21</p> <p>1 A Correct.</p> <p>2 Q And the ones that you've done in the</p> <p>3 past, has Facebook ever gone through and cherry picked what</p> <p>4 it thought you wanted, or have they just given you access to</p> <p>5 the account?</p> <p>6 A Not full access to the account. I've</p> <p>7 been given access in timeframes.</p> <p>8 Q Okay.</p> <p>9 A I haven't been just given access to their</p> <p>10 entire account.</p> <p>11 Q I understand that. And when you've been</p> <p>12 given access in timeframes, has Facebook gone through and</p> <p>13 picked out what was supposed to be in it, or have you gone</p> <p>14 into that timeframe yourself, looked at it and printed out</p> <p>15 what you wanted?</p> <p>16 A It would be case by case.</p> <p>17 Q Has there ever been a case where Facebook</p> <p>18 gave you particular information that you sought?</p> <p>19 A Yes.</p> <p>20 Q And that was when you gave specific</p> <p>21 requests that you wanted everything that happened on a</p> <p>22 certain day or --</p> <p>23 A Well, for instance, specifically they</p> <p>24 would give like who was the user of that Facebook account,</p> <p>25 that would be specific information given.</p>

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<p>1 Q Right. And in this case, you knew that</p> <p>2 Jason Karambit was an alias for Jason Cotterman, so you got</p> <p>3 that. But what I'm talking about is -- well, let's just look</p> <p>4 at the pages -- from Page 5 -- Exhibit 29, Page 5 through</p> <p>5 Exhibit 29, Page 44.</p> <p>6 A I don't have a Page 44.</p> <p>7 Q Right. Of those, did Facebook give you</p> <p>8 access to those?</p> <p>9 A Hold on. What did you say?</p> <p>10 Q As you go, let's just take Page 11 for a</p> <p>11 minute.</p> <p>12 A Okay. Let me -- Page 11 or --</p> <p>13 Q Exhibit 29, Page 11, it's a photograph.</p> <p>14 A Okay.</p> <p>15 MR. GAGE: For clarification, Counsel,</p> <p>16 when you refer to a page number, are you referring</p> <p>17 to the number at the bottom in blue?</p> <p>18 Q Yes. It will say Exhibit 29, then there</p> <p>19 is a space and then there is a number.</p> <p>20 A Okay.</p> <p>21 Q So I'm looking at Page 11 of Exhibit 29.</p> <p>22 A Okay.</p> <p>23 Q This, for example, is a photograph.</p> <p>24 A Okay.</p> <p>25 Q I will represent to you it's a photograph</p>	<p>1 Q How about the next page, Page 20?</p> <p>2 A No.</p> <p>3 Q We can agree that Page 20 has a</p> <p>4 photograph of an automatic pistol, correct?</p> <p>5 A I will agree to that.</p> <p>6 Q All right. Had Jason, when he made these</p> <p>7 so-called threats towards members of the Cincinnati Police</p> <p>8 Department, was he in possession of a pistol at that time?</p> <p>9 A I don't know that answer.</p> <p>10 Q Let's talk about Exhibit 29, Page 34.</p> <p>11 Again, the page number at the bottom.</p> <p>12 A Okay.</p> <p>13 Q Can you tell me what the relevance of</p> <p>14 another picture of Jason's wife, actually the same picture,</p> <p>15 would be to this investigation?</p> <p>16 A No.</p> <p>17 Q Well, assuming just for the sake of</p> <p>18 argument that you're the one that picked out what you wanted</p> <p>19 to print off out of this account, because I will represent to</p> <p>20 you there is an awful lot more that is in the account between</p> <p>21 these dates than what you printed off here, did you have any</p> <p>22 criteria that you were using in deciding what was relevant</p> <p>23 and what was not relevant to your aggravated menacing --</p> <p>24 A I don't recall --</p> <p>25 MR. GAGE: I'm going to object that I</p>
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<p>1 of Jason's wife.</p> <p>2 A Okay.</p> <p>3 Q Now, did you go through the account and</p> <p>4 pull this out as somehow relevant to your investigation?</p> <p>5 A I do not recall what I pulled out or what</p> <p>6 was given from Facebook.</p> <p>7 Q I will represent to you that Jason's</p> <p>8 Facebook page or feed has literally hundreds of photographs,</p> <p>9 hundreds of photographs, and some of them are his wife and</p> <p>10 some are others.</p> <p>11 Can you tell me why that, that photograph</p> <p>12 of Jason's wife would be relevant to an aggravated menacing</p> <p>13 investigation against members of the Cincinnati Police</p> <p>14 Department?</p> <p>15 A No, I cannot.</p> <p>16 Q Well, let's go through -- first of all,</p> <p>17 do you recall as you sit here, whether or not you obtained</p> <p>18 anything in the Facebook warrant that corroborated that there</p> <p>19 had been threats made by Jason Cotterman towards members of</p> <p>20 the Cincinnati Police Department?</p> <p>21 A No, I do not.</p> <p>22 Q Let's go to Page 29 -- or Page 19,</p> <p>23 Exhibit 29. Page 19. Can you tell me what the relevance of</p> <p>24 this is to the investigation?</p> <p>25 A No.</p>	<p>1 believe she testified that she doesn't recall</p> <p>2 whether it was her that actually printed stuff off.</p> <p>3 Q She did say that, which is why I prefaced</p> <p>4 the question with saying, assuming for the moment that you</p> <p>5 picked it out?</p> <p>6 A I will not assume that, because I don't</p> <p>7 recall if I did that or not.</p> <p>8 Q Well, there is two possibilities, either</p> <p>9 somebody furnished it to you or you picked it out?</p> <p>10 MS. BISSINGER: There is more than that.</p> <p>11 I mean, her boss could have picked it out.</p> <p>12 MR. CROSKERY: Well, that's true.</p> <p>13 MS. BISSINGER: I mean, there is a myriad</p> <p>14 of possibilities.</p> <p>15 BY MR. CROSKERY:</p> <p>16 Q Well, let's go back to the way that you</p> <p>17 normally do these search warrants then.</p> <p>18 Has there ever been a time that you've</p> <p>19 obtained material from -- obtained access to an account from</p> <p>20 Facebook and instead of you as the investigator going through</p> <p>21 and picking out what you wanted, that one of your bosses</p> <p>22 decided that he or she would do it?</p> <p>23 A He or she would do what?</p> <p>24 Q Would do, would pick out what information</p> <p>25 he or she, being your supervisor, thought was relevant to the</p>

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1 investigation and print it out and hand it to you, and say
 2 this is what is relevant?
 3 A There's been situations where my bosses
 4 have looked at stuff from my search warrants, but --
 5 Q Of course. But I'm saying, have done it
 6 instead of you, that is to say your boss says, I'm going to
 7 take this over, you sent the search warrant in, but I'm the
 8 one that wants to look through the account, see what is
 9 relevant and pull it out.
 10 Has that situation ever happened?
 11 A I don't know.
 12 Q You don't remember?
 13 A I don't know. I don't know if that's
 14 happened before or not.
 15 Q So in other words, during the time that
 16 you've been doing these Facebook searches, it could have
 17 happened or it could not, and you can't tell me as you sit
 18 here; is that right?
 19 A Correct. I've been doing search warrants
 20 probably for 15 years now. I cannot remember if there's been
 21 a time when a supervisor has went through and pulled stuff
 22 out or not.
 23 Q It's fair to say as you sit here today,
 24 that during the past four years when you've been working in
 25 the Internal Investigation Section, however, you cannot

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1 remember such an incident, true?
 2 A True.
 3 Q And it's fair to say that as you sit here
 4 today, you can't tell me, since you don't remember even
 5 issuing this warrant to start with, whether or not you
 6 initiated it on your own or whether or not you were directed
 7 to; is that right?
 8 A Initiated the search warrant?
 9 Q Yes. In other words, whose decision was
 10 it? Was it a supervisor saying, you know what, let's look at
 11 his Facebook page, or was it that you decided, I think it
 12 would be a good idea to look at his Facebook page?
 13 A I don't know that answer.
 14 Q On Page 2 of the search warrant, you
 15 indicate that investigators received information from a
 16 reliable source that Cotterman's posted statements regarding
 17 the aggravated menacing offense on social media.
 18 Do you recall what the reliable source
 19 was?
 20 A No.
 21 Q Do you recall why the source was
 22 reliable?
 23 A No.
 24 Q Were you present in the request to Judge
 25 Ruchlman that this search warrant be granted?

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1 A I was the one that took it to him to have
 2 it signed.
 3 Q That's what I'm asking. You were there,
 4 and did Judge Ruchlman ask you what the reliable source was?
 5 A I do not recall.
 6 Q Well, let's look at what you requested.
 7 On Page 2 at the bottom you say, "obtaining this information
 8 is necessary to determine the legitimate ownership of the
 9 items in question, or is in some manner directly related to
 10 the offense I'm investigating. Therefore, I am requesting
 11 authority to review, or to direct the review of this data to
 12 determine if it is related to the offense under
 13 investigation. Should it be determined that this data is not
 14 related to the offense under investigation, I shall direct
 15 that no disclosure of the contents of this data shall be
 16 made."
 17 Did I read that correctly?
 18 A Yes.
 19 Q You then state at the end that, "As soon
 20 as can reasonably be done, that item(s) no longer required
 21 for the purpose of analysis, or preservation of evidence will
 22 be returned to the party from whom it was seized after
 23 approval of the court," correct?
 24 A That's what it says.
 25 Q All right. And specifically what you

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1 were -- if I understand your Affidavit correctly, what you
 2 are asking for permission to preserve was content of incoming
 3 and outgoing communications, subscriber information, friends,
 4 stored messages in media or video, IP address history, and
 5 log-in information and passwords that related to the offenses
 6 up above, correct?
 7 A From the dates of October 22nd through
 8 October 30th.
 9 Q Correct.
 10 A Yes.
 11 Q So for those six days that you looked at,
 12 24 through 30 -- those seven days that you looked at it, was
 13 this the sum total of everything that Facebook provided, or
 14 do you know?
 15 A I don't know.
 16 Q But you were representing that the
 17 information that you would preserve was that relating to the
 18 offense, or the alleged offenses that you mentioned above,
 19 correct?
 20 A For that date period, from October 22nd
 21 to October 30th.
 22 Q Right. You were representing that the
 23 evidence that you would preserve was not everything in the
 24 world that was in his Facebook account for those dates, but
 25 that information that related to the offenses that he was

8 (Pages 26 to 29)

<p style="text-align: right;">Page 30</p> <p>1 being accused of up above, correct?</p> <p>2 A I don't necessarily know if that is</p> <p>3 correct. I don't -- what are you specifically asking me?</p> <p>4 Q Well, I'm really asking you -- well,</p> <p>5 first of all, we've already agreed that you can't give me a</p> <p>6 relationship of much that is in the back of this preserved</p> <p>7 evidence from those seven days to the particular offenses.</p> <p>8 I'm wondering why it's in this file at</p> <p>9 all. Why are there pictures of his wife on a couple of</p> <p>10 different pages?</p> <p>11 MS. BISSINGER: Objection. Asked and</p> <p>12 answered. She doesn't know.</p> <p>13 Q Well, you can answer the question. She</p> <p>14 is allowed to interpose an objection.</p> <p>15 A Can you ask the question again?</p> <p>16 Q Sure. Why, since you're representing,</p> <p>17 you're making the representation here to the Court, you go to</p> <p>18 the Court and say I want evidence that relates to these</p> <p>19 offenses, I think Facebook has it, these are the specific</p> <p>20 categories that I want, this is the stuff that I'm going to</p> <p>21 preserve.</p> <p>22 But what is in this file is a lot of</p> <p>23 stuff that, at least according to you, and according to me as</p> <p>24 I look at it, does not appear to have relevance to those</p> <p>25 items that you've outlined that are important in</p>	<p style="text-align: right;">Page 32</p> <p>1 says to somebody else.</p> <p>2 A Okay.</p> <p>3 Q And you weren't there when Jason said it,</p> <p>4 correct?</p> <p>5 A Correct.</p> <p>6 Q So to you it's hearsay?</p> <p>7 MS. BISSINGER: Objection.</p> <p>8 Q Well, it might be -- well, I'm giving the</p> <p>9 foundation. I'm explaining --</p> <p>10 MS. BISSINGER: You talk a lot, but you</p> <p>11 don't ask questions, and sometimes it seems like</p> <p>12 questions. So objection.</p> <p>13 MR. CROSKERY: All right. Can we go off</p> <p>14 the record for a second?</p> <p>15 (Off-the-record discussion.)</p> <p>16 BY MR. CROSKERY:</p> <p>17 Q Do you recall discussing any of the</p> <p>18 material that is in the search warrant, Exhibit 29, with</p> <p>19 anyone in your department?</p> <p>20 A Not specifically, no. I don't.</p> <p>21 Q Routinely, did you have briefs on what</p> <p>22 was coming about -- that's not a good way to put it. Scratch</p> <p>23 that question.</p> <p>24 Who was your supervisor for the Cotterman</p> <p>25 investigation?</p>
<p style="text-align: right;">Page 31</p> <p>1 investigating this offense.</p> <p>2 So first of all, I want to know why</p> <p>3 they're there at all?</p> <p>4 A I don't know.</p> <p>5 Q Okay. And second, I want to know whether</p> <p>6 or not there was any effort made with this, by you, that you</p> <p>7 can recollect, to find evidence that corroborated these</p> <p>8 offenses?</p> <p>9 A I don't know.</p> <p>10 Q Did you get any evidence at all that you</p> <p>11 used -- now, the next thing is, I think we can agree that the</p> <p>12 Fairfield -- the Fairfield Police Department where this</p> <p>13 interview happened is not within your jurisdiction, correct?</p> <p>14 A Correct.</p> <p>15 Q So what you're investigating is not what</p> <p>16 happened between Jason Cotterman and some interviewer up in</p> <p>17 the Fairfield Police Department, it is a hearsay threat that</p> <p>18 he is going to do specific harm of some sort to Cincinnati</p> <p>19 Police Department officers, correct?</p> <p>20 A I don't understand how that is hearsay,</p> <p>21 when the threat was made to the Pension Board guy, and he</p> <p>22 called Internal to report that.</p> <p>23 Q Well, it's hearsay. The question is</p> <p>24 whether or not it's admissible hearsay, but we don't need to</p> <p>25 get down into the weeds on that. Hearsay is what somebody</p>	<p style="text-align: right;">Page 33</p> <p>1 A I do not remember who the Commander was</p> <p>2 at the time, because I think it switched.</p> <p>3 Q Was it Captain Mack that was working with</p> <p>4 you, at that time it would have been Lieutenant Mack, I</p> <p>5 think?</p> <p>6 A At some point, but the Commanders</p> <p>7 switched, and I don't recall when.</p> <p>8 Q Who did they switch from?</p> <p>9 A Lieutenant Gregoire was there at one</p> <p>10 point, Lieutenant Mack was there at one point.</p> <p>11 Q Switched from Gregoire to Mack, right?</p> <p>12 A I don't know. I do not remember.</p> <p>13 Q Okay. But from Mack to Gregoire then?</p> <p>14 A I don't know. I don't remember.</p> <p>15 Q She doesn't know either way. So, well,</p> <p>16 regardless whether it was Mack or Gregoire, were you giving</p> <p>17 updates on the investigation to your supervisor?</p> <p>18 A Yes.</p> <p>19 Q All right. How often would those updates</p> <p>20 have taken place?</p> <p>21 A I don't know.</p> <p>22 Q Well, would it have been at least once a</p> <p>23 week?</p> <p>24 A I don't know.</p> <p>25 Q At least once a month?</p>

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1 A I don't know.
 2 Q Do you remember at least one update with
 3 each one of them; is that right?
 4 A Each one of who?
 5 Q Mack and Gregoire?
 6 A I don't know.
 7 Q Do you remember at least one Mack or
 8 either Mack, or either one?
 9 MS. BISSINGER: Objection.
 10 Q Do you remember giving one update at
 11 least for either Lieutenant Mack or Lieutenant Gregoire?
 12 A I don't know. They were the Commander of
 13 the unit.
 14 Q Okay. So when you told me that you gave
 15 updates earlier?
 16 A Uh-huh.
 17 Q Which is it, do you just not know whether
 18 you gave updates, would you routinely --
 19 A Who would you like the updates to, my
 20 Commander or who my supervisor was?
 21 Q Your supervisor, let's start with that.
 22 A That would be Sergeant McCurley.
 23 Q Okay. So did you update Sergeant
 24 McCurley?
 25 A Yes.

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1 Q How frequently did you update --
 2 A I don't know.
 3 Q Was it at least once a week?
 4 A I don't know.
 5 Q Was it once a month?
 6 A I don't know.
 7 Q Was it at least once every quarter?
 8 A I don't know.
 9 Q Was there at least one update to Sergeant
 10 McCurley?
 11 A Yes.
 12 Q Was there more than one?
 13 A I don't know.
 14 Q What do you recall about the update that
 15 you gave to Sergeant McCurley?
 16 A I don't know.
 17 Q What would have been your habit to update
 18 Sergeant McCurley on?
 19 A My habit?
 20 Q Yes. Would you have talked about the
 21 items of significance, for example, that you found in search
 22 warrants, would you have talked about what things that you
 23 needed in order to pursue the investigation further?
 24 Just give me a typical example of a type
 25 of progress report that you would give to your supervisor

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1 about one of these cases.
 2 A An example, maybe, whatever, if there was
 3 a return from Facebook, I would have given him that
 4 information.
 5 Q So as you sit here today, is it fair to
 6 say that you don't remember any details about any update that
 7 you gave to Sergeant McCurley?
 8 A Correct. I didn't even remember that I
 9 wrote the search warrant.
 10 Q And so it would also be fair to say that
 11 you don't remember whether or not you updated Lieutenant Mack
 12 or Lieutenant Gregoire, whichever one it was?
 13 A I don't know if I did specifically. No,
 14 I do not remember.
 15 Q Do you remember whether or not there was
 16 any particular interest in Jason Cotterman's case from
 17 Lieutenant Mack or Lieutenant Gregoire?
 18 A I don't know that answer. I mean, I'm
 19 sure there was, but I don't -- I don't know.
 20 Q Well, do you remember whether or not
 21 Lieutenant Colonel Bailey talked to you about the case?
 22 A I don't know.
 23 Q You don't know whether you remember? Did
 24 you -- I want to make sure that I understand your answer.
 25 A I do not remember speaking to Dave Bailey

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1 in reference to this case. I don't remember.
 2 Q I'm not trying to harass you. I just
 3 want to make sure we have clarity on the record, and your
 4 testimony is you don't remember. Well, maybe we will get
 5 some help from looking at Exhibit 30.
 6 I will hand you what's been marked as
 7 Exhibit 30. If you take a look at Exhibit 30, I think you
 8 will find this is an earlier search warrant that was filed on
 9 March 26th of 2015, seeking certain text messages, and it was
 10 filed by Sergeant McCurley. Do you see that?
 11 A I do.
 12 Q Do you remember whether or not you had
 13 ever seen this search warrant before?
 14 A I was not transferred to Internal until
 15 September of '15.
 16 Q When you were transferred to Internal,
 17 was this -- the contents of this search warrant in the file
 18 that you received, or do you know?
 19 A I didn't receive a file. I don't know
 20 what file you're talking about.
 21 Q I would be talking about the
 22 investigation file on Sergeant Cotterman.
 23 A The investigation that I was involved in
 24 was the one that stemmed from the conversation with the
 25 Pension Board man.

10 (Pages 34 to 37)

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<p>1 Q Okay. Fair enough.</p> <p>2 A So I don't know what file you're talking</p> <p>3 about.</p> <p>4 Q So just to clarify what you're saying,</p> <p>5 the investigation file that I'm referring to is the file that</p> <p>6 you would have initiated, it sounds like, when you were</p> <p>7 assigned to do that investigation.</p> <p>8 You're telling me that you didn't have</p> <p>9 anything that was in the file that you assembled that came</p> <p>10 from the prior case involving Jason Cotterman?</p> <p>11 A I'm not even saying I assembled a file.</p> <p>12 I don't know what file you're talking about.</p> <p>13 Q I would be talking about the file --</p> <p>14 okay. Let's start over again then.</p> <p>15 When you decided that you were going to</p> <p>16 investigate Jason Cotterman for the offenses that are</p> <p>17 mentioned in this search warrant, what did you do with the</p> <p>18 information once you obtained it?</p> <p>19 A In what search warrant?</p> <p>20 Q Well, the search warrant we're talking</p> <p>21 about from you.</p> <p>22 A We have two. You have two in front of</p> <p>23 me. Which one you are you referring to?</p> <p>24 Q Let me finish the question. Exhibit 29?</p> <p>25 A Okay.</p>	<p>1 A Yes.</p> <p>2 Q And you were putting things in that file,</p> <p>3 correct?</p> <p>4 A Yes.</p> <p>5 Q All right. So that's what I'm talking</p> <p>6 about. I'm talking about Jason Cotterman's investigative</p> <p>7 file. I'm talking about the file that you were putting</p> <p>8 things into related to this investigation.</p> <p>9 A Relating to the aggravated menacing?</p> <p>10 Q Correct.</p> <p>11 A Okay.</p> <p>12 Q And the other thing that you mention in</p> <p>13 your search warrant.</p> <p>14 A What other thing?</p> <p>15 Q Well, you mention aggravated menacing,</p> <p>16 and then you also on Page 2 talk about verbal threats, the</p> <p>17 serious harm that dealt with the investigation.</p> <p>18 Are you saying that the only thing that</p> <p>19 you were interested in are things that pertain to the</p> <p>20 aggravated menacing offense on Page 1?</p> <p>21 A What the search warrant was written for</p> <p>22 was anything from October 22nd to October 30th, including,</p> <p>23 involving the incident with the Pension Board.</p> <p>24 Q Correct.</p> <p>25 A Correct.</p>
Page 39	Page 41
<p>1 Q That's your search warrant?</p> <p>2 A Correct.</p> <p>3 Q When you started out the investigation of</p> <p>4 Jason Cotterman for this incident involving a detective in</p> <p>5 Fairfield, you obtained information. You obtained</p> <p>6 information from this search warrant, and I'm assuming that</p> <p>7 you also had notes, you also had interview notes?</p> <p>8 A Correct.</p> <p>9 Q You also had perhaps other paperwork?</p> <p>10 A Okay.</p> <p>11 Q So, I'm asking whether or not when you</p> <p>12 assembled this information, you used any prior information</p> <p>13 from the Police Department?</p> <p>14 A I'm not sure I even know what you mean.</p> <p>15 Q Do you use files in Internal</p> <p>16 Investigations?</p> <p>17 A Are you talking about like a brown</p> <p>18 folder, like a file?</p> <p>19 Q Yeah.</p> <p>20 A Yeah, we do.</p> <p>21 Q Okay. Did you have a file on Jason</p> <p>22 Cotterman pertaining to this investigation?</p> <p>23 A Personally, no, I did not.</p> <p>24 Q All right. Did the Cincinnati Police</p> <p>25 Department have one?</p>	<p>1 Q And specifically, those items that are</p> <p>2 violative of that law, or that shed light on violations of</p> <p>3 that law, correct?</p> <p>4 A For the aggravated menacing, yes.</p> <p>5 Q Correct. So there is not -- there is not</p> <p>6 another law that we're talking about here, that's the one</p> <p>7 that you're hanging your hat on, just to make sure?</p> <p>8 A I'm not sure what you mean by hanging my</p> <p>9 hat on, but the search warrant was written for the aggravated</p> <p>10 menacing.</p> <p>11 Q All right. And only for the aggravated</p> <p>12 menacing?</p> <p>13 A Yes.</p> <p>14 Q All right. And that is one of the things</p> <p>15 that was in the brown file that was kept by the Cincinnati</p> <p>16 Police Department related to the investigation that you were</p> <p>17 doing, correct?</p> <p>18 A Now, when you say kept, we no longer have</p> <p>19 anything. It was sealed and sent to records. So when you</p> <p>20 mean by kept, I don't -- we don't have anything.</p> <p>21 Q Well, when you say sealed and sent to</p> <p>22 records, you're talking about Cincinnati Police Department</p> <p>23 records, right?</p> <p>24 A Correct.</p> <p>25 Q All right. So I think we better clarify</p>

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1 we. What I'm talking about is Cincinnati Police Department.
 2 When you send them to records, they don't disappear and get
 3 shredded, unless someone directs they do, they're still
 4 within the Cincinnati Police Department.
 5 It's just you're saying it was no longer
 6 in the Internal Investigations Section?
 7 A Correct.
 8 Q All right. So when was the record of
 9 this investigation sealed and sent to the --
 10 A I do not know. I don't know that answer.
 11 Q It wasn't until after you were finished
 12 with it, the Investigation Section, true?
 13 A I don't know when it was sent.
 14 Q Did you make any recommendations based on
 15 your investigation?
 16 A What do you mean recommendations?
 17 Q Well, you've been directed to do an
 18 investigation.
 19 A I've been directed to assist to do an
 20 investigation.
 21 Q Okay. So did you participate in making
 22 recommendations on the outcome of the investigation?
 23 A Internal doesn't make recommendations.
 24 Internal logs the facts and it gets --
 25 Q And it becomes a report?

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1 A Correct.
 2 Q All right.
 3 A I'm not sure what recommendation you're
 4 talking about.
 5 Q All right. So forget about the
 6 recommendation part.
 7 Were you the one who wrote the final
 8 report regarding the investigation?
 9 A No.
 10 Q Who wrote the report?
 11 A I don't know.
 12 Q And so I can make sure we're talking
 13 about the same thing, when you say final report, is there a
 14 particular form number that is used?
 15 A No. I don't know what final report
 16 you're referring to. I didn't write a final report. I don't
 17 know.
 18 Q When you do an investigation, and you're,
 19 as you say, simply reporting the facts?
 20 A Uh-huh.
 21 Q Let's start with this, to whom are you
 22 reporting the facts?
 23 A To the Police Chief.
 24 Q All right. So if I understand you
 25 correctly, the outcome of the investigation that you do is

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1 some sort of written report that lists the facts that the
 2 investigating team or person has determined, and that is in a
 3 format of some sort; is it a Form 17?
 4 A It could start with a Form 17.
 5 Q Is there any prescribed format that is
 6 supposed to be used in giving these reports or facts to the
 7 Chief?
 8 A When an Internal report is completed, if
 9 it's a report, it's an IIS summary, and that's what gets
 10 turned into the Police Chief.
 11 As far as a Form 17 goes, Form 17's are
 12 all throughout the department. They're not just -- they're
 13 just not specific to Internal.
 14 Q Oh, I didn't say it was specific to
 15 Internal. I'm asking if that's what the normal way, if there
 16 is a normal way, would be of reporting the facts to the
 17 Chief?
 18 A It could go either way, sir. It could go
 19 on a Form 17, it could go on an IIS summary.
 20 Q It could go on a what?
 21 A IIS summary, the Internal Investigations
 22 Summary.
 23 Q Is the IIS summary also on some sort of
 24 prescribed form number?
 25 A No.

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1 Q So that would simply be typed sheets with
 2 to, through subject, that type of thing?
 3 A There is a format on it.
 4 Q All right. Where is the format for these
 5 reports listed? Is it a regulation, is it a guidance that is
 6 written by the Commander of the Internal Investigations Unit?
 7 Where would I look if I wanted to find
 8 out, what is the format for giving a report of facts to the
 9 Chief?
 10 A It's on the Internal hard drive.
 11 Q So comes the day when you need to write a
 12 report to the Chief?
 13 A Yes.
 14 Q You go to the Internal hard drive, and
 15 you look up, maybe copy something? I don't want to put words
 16 in your mouth.
 17 Tell me how you go about putting together
 18 this report for the Chief when you do it.
 19 A So I would pull up an IIS Summary, list
 20 all the interviews, facts of the investigation, whatever else
 21 is important, and send it through the chain.
 22 Q All right. So the sections that would be
 23 in it, in a typical report like this would be what, would it
 24 be an introduction?
 25 A Introduction, interviews, summary,

<p style="text-align: right;">Page 46</p> <p>1 additional items. That might be it. I'm not sure.</p> <p>2 Q Do you recall whether or not you ever saw</p> <p>3 the report that went to the Chief on this investigation?</p> <p>4 A I don't know.</p> <p>5 Q Were you given input on it?</p> <p>6 A What investigation, on the aggravated</p> <p>7 menacing?</p> <p>8 Q Yes. That's what we're talking about.</p> <p>9 A I don't know. I don't know if I saw it</p> <p>10 or not.</p> <p>11 Q Are these reports that go to the Chief</p> <p>12 signed by somebody?</p> <p>13 A Yes.</p> <p>14 Q And it's your belief as you sit here,</p> <p>15 that you did not sign the one that went to the Chief in</p> <p>16 Cotterman's case; is that right?</p> <p>17 A I wouldn't have signed it. It would have</p> <p>18 been the Commander of Internal.</p> <p>19 Q So the one that signed the report would</p> <p>20 be whoever the Commander was at that time?</p> <p>21 A Correct.</p> <p>22 Q But typically since he did not do the</p> <p>23 investigative work or most of it, it would not be the</p> <p>24 Commander of Internal that wrote these reports; is that</p> <p>25 correct?</p>	<p style="text-align: right;">Page 48</p> <p>1 military medical records. Now, you've been identified by the</p> <p>2 City as the person to have knowledge on how that happened in</p> <p>3 a series of Interrogatories.</p> <p>4 So let me just ask you this: What is</p> <p>5 your recollection about how those records were obtained?</p> <p>6 A I called someone and asked if it was</p> <p>7 possible to confirm through military records if Cotterman was</p> <p>8 a sniper or had Special Op training.</p> <p>9 Q Who did you call?</p> <p>10 A His name is Matt DeBlough, DeBlough.</p> <p>11 Q D-E?</p> <p>12 A I don't know.</p> <p>13 Q And where was Matt DeBlough located?</p> <p>14 A The FBI here locally.</p> <p>15 Q What did Mr. DeBlough tell you?</p> <p>16 A That he would get back to me.</p> <p>17 Q Did he get back to you?</p> <p>18 A He did.</p> <p>19 Q What did he tell you?</p> <p>20 A I went and picked up records.</p> <p>21 Q Picked up from where?</p> <p>22 A From Matt DeBlough.</p> <p>23 Q On Fourth Street? Which office did you</p> <p>24 go to?</p> <p>25 A I don't remember that.</p>
<p style="text-align: right;">Page 47</p> <p>1 A Correct.</p> <p>2 Q All right. When you write these reports,</p> <p>3 does the Commander of the Internal sometimes have questions</p> <p>4 or suggestions as to how the report should be changed before</p> <p>5 it goes up to the Chief?</p> <p>6 A Yes.</p> <p>7 Q So what I would infer is, someone like</p> <p>8 you or Sergeant McCurley writes up the basic part of the</p> <p>9 report, it goes up to the Commander for review, the Commander</p> <p>10 looks at it, then if something more needs to be done, he</p> <p>11 calls the writer of the report in to discuss it?</p> <p>12 A Yes.</p> <p>13 Q All right. And at that point, you follow</p> <p>14 the Commander's recommendations to include whatever was</p> <p>15 missing or -- and then send it back up for filing and</p> <p>16 signature and submission; is that correct?</p> <p>17 A Yes.</p> <p>18 Q Okay. Have there been times when an</p> <p>19 investigation was initiated, but there's been direction to</p> <p>20 not do a final report and to just drop it?</p> <p>21 A I have no idea.</p> <p>22 Q Has that ever happened that you can</p> <p>23 recall?</p> <p>24 A Not that I'm aware of.</p> <p>25 Q All right. Let's talk about Jason's</p>	<p style="text-align: right;">Page 49</p> <p>1 Q Did you just ask for records that</p> <p>2 confirmed whether or not Jason Cotterman was a sniper?</p> <p>3 A I asked for military records to confirm</p> <p>4 if he was a sniper or had Special Ops training.</p> <p>5 Q Did you ask for his whole file?</p> <p>6 A I asked for military records, that's what</p> <p>7 I asked for.</p> <p>8 Q Did you use any paperwork to record this</p> <p>9 request to the FBI?</p> <p>10 A No.</p> <p>11 Q How did you happen to know Matt DeBlough?</p> <p>12 A I got his name through another party.</p> <p>13 Q What other party gave you his name?</p> <p>14 A A.J. Warner.</p> <p>15 Q Who is A.J. Warner?</p> <p>16 A He is an FBI agent in Chicago that is a</p> <p>17 former Cincinnati policeman.</p> <p>18 Q How did you happen to know A.J. Warner?</p> <p>19 A He is a former Cincinnati policeman.</p> <p>20 Q I heard that, but you don't know all the</p> <p>21 former Cincinnati policemen, I'm assuming.</p> <p>22 Did you have any sort of relationship</p> <p>23 with him, had you worked together with him?</p> <p>24 A Yes.</p> <p>25 Q Tell me about that. When did you and Mr.</p>

<p style="text-align: right;">Page 50</p> <p>1 Warner work together?</p> <p>2 A I don't know what specific year, sir. I</p> <p>3 don't even remember what year he left. I don't know.</p> <p>4 Q What department was he in with you?</p> <p>5 A He was in Criminal Investigation Section.</p> <p>6 Q And he was not in Internal with you,</p> <p>7 correct?</p> <p>8 A No.</p> <p>9 Q All right. But you still had his phone</p> <p>10 number?</p> <p>11 A Yes.</p> <p>12 Q Were you directed by anybody in the</p> <p>13 Cincinnati Police Department to try to get Jason's military</p> <p>14 records?</p> <p>15 A No.</p> <p>16 Q When you obtained these records from the</p> <p>17 FBI, what did you do with them?</p> <p>18 A Turned them over to a supervisor in</p> <p>19 Internal.</p> <p>20 Q Who was the supervisor to whom you turned</p> <p>21 them over?</p> <p>22 A I do not remember. I don't remember who</p> <p>23 it was at the time.</p> <p>24 Q What are the possibilities, how many</p> <p>25 supervisors did you have in Internal?</p>	<p style="text-align: right;">Page 52</p> <p>1 there. What is the question number one?</p> <p>2 Q Right now, do you -- can you tell me what</p> <p>3 Marine Special Operations is?</p> <p>4 A No.</p> <p>5 Q All right. Did you know back then when</p> <p>6 you initiated the search, what Marines Special Operations</p> <p>7 was?</p> <p>8 A No.</p> <p>9 Q So are you certain when you talked to</p> <p>10 Matt DeBlough that you simply said, I want to confirm whether</p> <p>11 or not Mr. Cotterman has been a sniper or has been in Special</p> <p>12 Operations or did you ask for more?</p> <p>13 A I asked if he could confirm if he was a</p> <p>14 sniper or in Special Ops, that's all I asked for.</p> <p>15 Q All right. Is it your testimony that you</p> <p>16 did not ask for the records?</p> <p>17 A For what records?</p> <p>18 Q The records that you ended up getting.</p> <p>19 Did you ask -- I may not have phrased that very well.</p> <p>20 Did you ask Mr. DeBlough, can you confirm</p> <p>21 for me whether or not he was a sniper or whether or not he</p> <p>22 was in Special Operations, or did you ask for the records</p> <p>23 that dealt with whether he was a sniper or whether he was in</p> <p>24 Special Ops?</p> <p>25 A I asked for the military records to</p>
<p style="text-align: right;">Page 51</p> <p>1 A McCurley at some point left, he got made</p> <p>2 Lieutenant. At some point Mike Whitis.</p> <p>3 Q Could you spell that last name, please?</p> <p>4 A W-H-I-T-I-S. I don't -- I don't even --</p> <p>5 I don't remember who else it would have been.</p> <p>6 Q Could it have been Dave Sprogue?</p> <p>7 A Dave Sprague, could have been.</p> <p>8 Q Did you review the records before you</p> <p>9 turned them over?</p> <p>10 A I looked at them, yes.</p> <p>11 Q Did they say anything about whether or</p> <p>12 not Jason Cotterman was a sniper?</p> <p>13 A I didn't see that confirmed.</p> <p>14 Q Did it say anything about whether or not</p> <p>15 he was in Special Ops?</p> <p>16 A Not that I saw.</p> <p>17 Q What is Marine Special Ops?</p> <p>18 A I don't know.</p> <p>19 Q Well, did you look into what Marine</p> <p>20 Special Ops was before you went looking for his records to</p> <p>21 find out that he had been accused of being a Marine Special</p> <p>22 Ops?</p> <p>23 In other words, is that something that</p> <p>24 you knew at one point and have forgotten?</p> <p>25 A I don't -- there is like three questions</p>	<p style="text-align: right;">Page 53</p> <p>1 confirm if he was a sniper or in Special Ops.</p> <p>2 Q So then you picked up a couple hundred</p> <p>3 pages worth of medical records apparently from Matt DeBlough.</p> <p>4 Did you go through those records?</p> <p>5 A I picked up military records, I went</p> <p>6 through them. I don't know what medical records you're</p> <p>7 speaking of.</p> <p>8 Q I'm talking about the records that dealt</p> <p>9 with certain medical incidents that my client had.</p> <p>10 A That was in the medical -- in the</p> <p>11 military record?</p> <p>12 Q Yes.</p> <p>13 A Okay.</p> <p>14 Q So essentially you went through the</p> <p>15 records and then turned them straight over to your</p> <p>16 supervisor, whoever it happened to be at the time; is that</p> <p>17 correct?</p> <p>18 A Yes.</p> <p>19 Q Did you do any write-up on your own of</p> <p>20 what was in the records?</p> <p>21 A No.</p> <p>22 Q Did you indicate to your supervisor, we</p> <p>23 have a lot of things that have nothing to do with what I</p> <p>24 asked for?</p> <p>25 A No.</p>

14 (Pages 50 to 53)

<p style="text-align: right;">Page 54</p> <p>1 Q But you did have a lot of things in those</p> <p>2 records that had nothing to do with whether or not Mr.</p> <p>3 Cotterman was a sniper and whether or not he had been in</p> <p>4 Special Operations, true?</p> <p>5 MR. GAGE: Objection.</p> <p>6 A Is that a question?</p> <p>7 Q Yes.</p> <p>8 MR. GAGE: Did you get my objection?</p> <p>9 A What was the question?</p> <p>10 Q The question was, you did see a lot of</p> <p>11 things in the military records that you obtained from Mr.</p> <p>12 DeBlough that had nothing to do with whether or not Jason</p> <p>13 Cotterman was a sniper or whether or not he was in Special</p> <p>14 Operations, true?</p> <p>15 A There was a lot of information in that</p> <p>16 military record, yes.</p> <p>17 Q And a lot of it had nothing to do with</p> <p>18 whether or not he was a sniper and whether or not he was in</p> <p>19 Special Ops, true?</p> <p>20 A True.</p> <p>21 Q So you had received records that were far</p> <p>22 more, far more broad than the narrow scope of what you had</p> <p>23 asked for, correct?</p> <p>24 A Okay.</p> <p>25 Q True?</p>	<p style="text-align: right;">Page 56</p> <p>1 or alternatively had been in Special Operations in the</p> <p>2 Marines, he had already been in the Cincinnati Police</p> <p>3 Department about 15 years, correct?</p> <p>4 A Yes.</p> <p>5 Q And so can you explain to me why it would</p> <p>6 have been important whether or not he had been designated as</p> <p>7 an expert marksman in 1998, '99 or 2000, to your</p> <p>8 investigation?</p> <p>9 A I thought it would be relevant to see if</p> <p>10 he could follow through some of the threats that he had made</p> <p>11 against members of the Police Department.</p> <p>12 Q I'm still having a little trouble</p> <p>13 following. Had he said that he was going to use his</p> <p>14 expertise as a sniper to pick somebody out from an ambush,</p> <p>15 what was it that --</p> <p>16 A I don't recall the specifics of it.</p> <p>17 Q I think you already told me that you</p> <p>18 didn't even know what Special Operations was. So I'm</p> <p>19 guessing that you probably are not able to tell me why that</p> <p>20 would be relevant to the threat?</p> <p>21 A If he had special training in some sort</p> <p>22 of shooting or sniper type thing, that's what I was referring</p> <p>23 to.</p> <p>24 Q Well, doesn't every single Cincinnati</p> <p>25 police officer go through marksmanship training and testing</p>
<p style="text-align: right;">Page 55</p> <p>1 A Yeah.</p> <p>2 Q So what did you do with all the records</p> <p>3 that were far beyond the scope of what you had asked for?</p> <p>4 A As I indicated, I turned them over to a</p> <p>5 supervisor.</p> <p>6 Q And when you did so, did you indicate,</p> <p>7 look, I only asked for stuff that had to do with whether or</p> <p>8 not he was a sniper or whether or not he was in Special</p> <p>9 Operations, but I received a lot of other materials from the</p> <p>10 FBI?</p> <p>11 A I said here is the military record I</p> <p>12 received.</p> <p>13 MR. GAGE: Can we take a break whenever</p> <p>14 you get to --</p> <p>15 MR. CROSKERY: Sure. We will take one</p> <p>16 right now.</p> <p>17 (Whereupon, the deposition was recessed at</p> <p>18 10:50 a.m.)</p> <p>19 (Whereupon, the deposition was reconvened at</p> <p>20 11:10 a.m.)</p> <p>21 BY MR. CROSKERY:</p> <p>22 Q So I'm trying to understand your thinking</p> <p>23 a little bit in obtaining these records.</p> <p>24 First of all, at the time that you were</p> <p>25 looking for whether or not Jason Cotterman had been a sniper</p>	<p style="text-align: right;">Page 57</p> <p>1 on a regular basis?</p> <p>2 A Not sniper training.</p> <p>3 Q Do you have a SWAT team?</p> <p>4 A We do.</p> <p>5 Q Does the SWAT team go through sniper</p> <p>6 training?</p> <p>7 A I don't know.</p> <p>8 Q Do you know what the difference is</p> <p>9 between sniper training and marksmanship training?</p> <p>10 A I do not.</p> <p>11 Q Do you know if there is a difference?</p> <p>12 A I don't know.</p> <p>13 Q So is there someone who told you that it</p> <p>14 would be important to find out whether or not Jason Cotterman</p> <p>15 had had sniper training, or is it something that you just</p> <p>16 decided on your own?</p> <p>17 A Nobody told me.</p> <p>18 Q So you decided it on your own, correct?</p> <p>19 A Yes.</p> <p>20 Q So since you decided it on your own, to</p> <p>21 you, what is a sniper?</p> <p>22 A My understanding of who a sniper is, is</p> <p>23 someone who gets like a special label through the military to</p> <p>24 be able to shoot targets from far away.</p> <p>25 Q Does the sniper use the same weapon as</p>

15 (Pages 54 to 57)

<p style="text-align: right;">Page 58</p> <p>1 the others?</p> <p>2 A Sir, I don't know.</p> <p>3 Q So why did you decide to call an FBI</p> <p>4 agent to get the records instead of just submitting a search</p> <p>5 warrant or a request for them through the military?</p> <p>6 A I contacted another investigative entity</p> <p>7 to see if it was even possible to confirm if he was or was</p> <p>8 not a sniper or Special Op from the military.</p> <p>9 So I contacted another police entity,</p> <p>10 which happens all the time in investigations.</p> <p>11 Q I'm sure it does. So when you -- when</p> <p>12 you contacted initially your friend that was a former</p> <p>13 Cincinnati police officer, you weren't asking him to get</p> <p>14 records, you were asking whether it was possible to obtain</p> <p>15 them; is that right?</p> <p>16 A No. That's not what I asked Warner.</p> <p>17 Q Okay. What did you ask Warner?</p> <p>18 A If there was somebody locally that he</p> <p>19 could give me the name of that I could contact.</p> <p>20 Q All right. That's fine. So, when you</p> <p>21 contacted Matt DeBlough, you weren't contacting him to</p> <p>22 actually get records, you were contacting him to see if it</p> <p>23 was possible to get them; is that right?</p> <p>24 A Correct.</p> <p>25 Q Did he tell you that he would see whether</p>	<p style="text-align: right;">Page 60</p> <p>1 A I don't know that answer, sir.</p> <p>2 Q Did you ask Mr. --</p> <p>3 A No, I did not.</p> <p>4 Q Let me finish the question, so it's clear</p> <p>5 on the record.</p> <p>6 Did you ask Mr. DeBlough how he had</p> <p>7 obtained those military records that he gave you in the</p> <p>8 envelope?</p> <p>9 A No.</p> <p>10 Q Were there any markings on the envelope</p> <p>11 that he gave you? Just a plain envelope?</p> <p>12 A I don't recall.</p> <p>13 Q Did you keep the envelope?</p> <p>14 A I don't recall.</p> <p>15 Q Did you put down in writing for anyone</p> <p>16 such as your supervisor or the department, did you put down</p> <p>17 in writing the process that you used to obtain these records?</p> <p>18 A No.</p> <p>19 Q Did you discuss with anyone in your</p> <p>20 department the process that you used to obtain these records?</p> <p>21 A I don't recall that.</p> <p>22 Q When you gave the records to your</p> <p>23 supervisor, whoever it happened to be, did you indicate to</p> <p>24 the supervisor at that time the process that you had used to</p> <p>25 obtain the records?</p>
<p style="text-align: right;">Page 59</p> <p>1 or not he could get the records?</p> <p>2 A All I recall him saying is he would get</p> <p>3 back with me.</p> <p>4 Q When he got back to you, did he tell you</p> <p>5 that he had obtained the records?</p> <p>6 A All I remember is that he -- that I</p> <p>7 went -- I met him and picked up like an envelope. I don't</p> <p>8 remember there being a discussion of what it was. I don't</p> <p>9 really recall.</p> <p>10 Q Well, he did tell you to come pick up an</p> <p>11 envelope from him?</p> <p>12 A Correct.</p> <p>13 Q Did you think there was going to be</p> <p>14 something in the envelope other than military records?</p> <p>15 A No, I thought it was going to be military</p> <p>16 records confirming or not confirming that he was a sniper or</p> <p>17 in Special Ops.</p> <p>18 Q Did it occur to you that when you went to</p> <p>19 pick up this envelope from the FBI, that you hadn't pursued</p> <p>20 any normal official channels to get those records?</p> <p>21 A I went through another investigative</p> <p>22 entity, like another department or -- for information</p> <p>23 regarding an investigation that I was involved in, which we</p> <p>24 do all of the time.</p> <p>25 Q How did the FBI get those records?</p>	<p style="text-align: right;">Page 61</p> <p>1 A I do not recall.</p> <p>2 Q Do you recall whether or not the</p> <p>3 supervisor that you gave the records to indicated any</p> <p>4 interest in how you had obtained those records?</p> <p>5 A No, I do not recall that.</p> <p>6 Q Now, so far every single person that I</p> <p>7 have talked to from the Cincinnati Police Department tells me</p> <p>8 that there is no other episode that they are aware of where</p> <p>9 the Cincinnati Police Department has obtained military</p> <p>10 records such as these, past the point when somebody was a</p> <p>11 recruit.</p> <p>12 Has there been any other time that you've</p> <p>13 obtained records such as the ones that you got for Jason</p> <p>14 Cotterman?</p> <p>15 A No.</p> <p>16 Q Did it occur to you that this whole</p> <p>17 process was unusual and smacked of being violative of my</p> <p>18 client's rights?</p> <p>19 MS. BISSINGER: Objection.</p> <p>20 MR. GAGE: Objection.</p> <p>21 Q You can answer.</p> <p>22 A No.</p> <p>23 MR. CROSKERY: Just for the benefit of</p> <p>24 the court reporter, both of the attorneys uttered</p> <p>25 the word objection.</p>

<p style="text-align: right;">Page 62</p> <p>1 MS. BISSINGER: They were tight</p> <p>2 objections, too.</p> <p>3 BY MR. CROSKERY:</p> <p>4 Q So as part of your investigation</p> <p>5 training, are you trained in law of search and seizure,</p> <p>6 Fourth Amendment rights?</p> <p>7 A We don't receive a specific training for</p> <p>8 investigations.</p> <p>9 Q But you have background that tells you</p> <p>10 this is the process that is normally used to obtain</p> <p>11 information that I need relevant to an investigation; is that</p> <p>12 right?</p> <p>13 A I don't understand what you're asking.</p> <p>14 Q Well, let's put it this way: When you</p> <p>15 set forth a search warrant?</p> <p>16 A Correct.</p> <p>17 Q The reason for setting forth a search</p> <p>18 warrant is to establish probable cause so that the judge can</p> <p>19 look at it and say, given this probable cause, there is</p> <p>20 enough here to justify a search and seizure of information.</p> <p>21 Do you understand that?</p> <p>22 A Yes, I understand that.</p> <p>23 Q All right. But you would agree with me</p> <p>24 that in this particular case, when you pick up the phone and</p> <p>25 call a friend to get information from the FBI, you did not go</p>	<p style="text-align: right;">Page 64</p> <p>1 are entitled to obtain it, true?</p> <p>2 MS. BISSINGER: Objection.</p> <p>3 Q You can answer.</p> <p>4 MS. BISSINGER: If you can understand it.</p> <p>5 Q Do you understand the question?</p> <p>6 A I think there was like three questions in</p> <p>7 there.</p> <p>8 Q I think there is only one, but do you --</p> <p>9 A No, I don't understand it, sir.</p> <p>10 Q So let's ask it this way. You could have</p> <p>11 gone before Judge Ruehlman and sought permission to obtain</p> <p>12 Jason's military records, correct?</p> <p>13 MR. GAGE: Objection.</p> <p>14 Q You could have sworn out a search warrant</p> <p>15 to obtain Jason's military records, correct?</p> <p>16 A I guess that could have been done.</p> <p>17 Q Why didn't you?</p> <p>18 A I reached out to another law enforcement</p> <p>19 entity to see if I could confirm or deny that Cotterman was</p> <p>20 the sniper with these Special Ops.</p> <p>21 Q I know what you did.</p> <p>22 A Uh-huh.</p> <p>23 Q But what you're doing in essence takes</p> <p>24 out the gatekeeper, takes out the judge who looks at whether</p> <p>25 or not that information is sufficiently related for you to be</p>
<p style="text-align: right;">Page 63</p> <p>1 before a judge to determine whether or not the information</p> <p>2 that you were seeking was information that you were entitled</p> <p>3 to have, true?</p> <p>4 A I did not go before a judge.</p> <p>5 Q And you understand that the reason to go</p> <p>6 before a judge and obtain a search warrant is so that an</p> <p>7 independent review by someone who is in the legal system can</p> <p>8 say that this is information that you are entitled to have to</p> <p>9 search and to seize, correct?</p> <p>10 MR. GAGE: Objection.</p> <p>11 Q You can answer.</p> <p>12 A If it's a specific item, like for</p> <p>13 instance, a cell phone or Facebook warrant, yes, I would take</p> <p>14 it -- I would take a search warrant to a judge to go through</p> <p>15 that information.</p> <p>16 Q And you did, when you wanted information</p> <p>17 from Facebook --</p> <p>18 A Yes, I did.</p> <p>19 Q -- about his text messages and so forth,</p> <p>20 you went to a judge, you said here is what I need, here is</p> <p>21 the reason why it relates to aggravated menacing, but it's</p> <p>22 also fair to say that no judge told you that in the case of</p> <p>23 Jason Cotterman, whether or not he was a sniper or in Special</p> <p>24 Operations in the Marines 15 years ago has sufficient</p> <p>25 relevance to the accusation of aggravated menacing, that you</p>	<p style="text-align: right;">Page 65</p> <p>1 entitled to it.</p> <p>2 So I'm asking you not what you did, but</p> <p>3 why you did not swear out a search warrant?</p> <p>4 A Because all I was looking for was to</p> <p>5 confirm or deny if he had these sniper or Special Ops things.</p> <p>6 Q So when you saw that you had obtained far</p> <p>7 more information than whether or not he was a sniper or</p> <p>8 whether or not he was in Marine Special Operations, and that</p> <p>9 you had obtained that information without going through the</p> <p>10 process that guarantees American citizens the right to be</p> <p>11 protected from unlawful search and seizure, did you make any</p> <p>12 recommendation that those records should be destroyed?</p> <p>13 A No.</p> <p>14 Q Did it cause you any level of discomfort</p> <p>15 that you had obtained information far more than whether or</p> <p>16 not Jason Cotterman was a sniper or whether or not Jason</p> <p>17 Cotterman was in Special Operations through an unofficial</p> <p>18 back door channel without having gone through a judge?</p> <p>19 MR. GAGE: Objection.</p> <p>20 MS. BISSINGER: Objection.</p> <p>21 MR. CROSKERY: Let the record reflect</p> <p>22 that both attorneys have objected together again.</p> <p>23 You can answer.</p> <p>24 A I don't even understand that question,</p> <p>25 sir.</p>

<p style="text-align: right;">Page 66</p> <p>1 Q After the records were obtained, was</p> <p>2 there any discussion that you recall within the Internal</p> <p>3 Investigation Section about whether or not those records had</p> <p>4 been properly obtained?</p> <p>5 A I do not recall that conversation.</p> <p>6 Q Were the records made part of the factual</p> <p>7 file that was reported to the Chief, or do you know?</p> <p>8 A I don't know that answer.</p> <p>9 Q Were those records furnished to Dr. Daum?</p> <p>10 A I don't know that answer either.</p> <p>11 Q If I told you that the records were not</p> <p>12 even mentioned in the final Internal report to the Chief,</p> <p>13 that would not surprise you, correct?</p> <p>14 A I'm not sure what you mean would surprise</p> <p>15 me. I didn't write the final report, so I don't -- I don't</p> <p>16 know what you mean, surprise me.</p> <p>17 Q So your testimony as you sit here today</p> <p>18 is that at no time, and I will exclude any conversation you</p> <p>19 may have had with counsel, but at no time have the subject of</p> <p>20 how Jason Cotterman's military records were obtained, at no</p> <p>21 time was that a discussion between you and any higher up in</p> <p>22 the department, correct?</p> <p>23 A That is not what I said. I said I did</p> <p>24 not recall if there was a conversation of how I obtained</p> <p>25 them.</p>	<p style="text-align: right;">Page 68</p> <p>1 still an ongoing investigation. I don't -- I'm not sure what</p> <p>2 you're asking me.</p> <p>3 Q Weren't you involved in a closed</p> <p>4 investigation of Diondre Winstead?</p> <p>5 A I have been involved in an investigation</p> <p>6 of Officer Winstead, correct.</p> <p>7 Q And what was the nature of what you were</p> <p>8 investigating for?</p> <p>9 A I was assisting another Sergeant in</p> <p>10 reference to allegations that Officer Winstead was giving out</p> <p>11 information reference ongoing investigations in District</p> <p>12 4's --</p> <p>13 Q But you were --</p> <p>14 MR. GAGE: Can we take a break here? I</p> <p>15 want to object.</p> <p>16 MR. CROSKERY: Let me skip that, I will</p> <p>17 keep her out of trouble.</p> <p>18 MR. GAGE: I want to -- I want to make</p> <p>19 sure she is not being asked about ongoing</p> <p>20 investigations.</p> <p>21 BY MR. CROSKERY:</p> <p>22 Q Correct. What I'm asking about is an</p> <p>23 investigation that was closed sometime ago where it was</p> <p>24 alleged that the Diondre Winstead was tipping off drug</p> <p>25 dealers, you were involved in that investigation, correct?</p>
<p style="text-align: right;">Page 67</p> <p>1 Q Would it be the type of conversation that</p> <p>2 you would be likely to recall if you had been given some sort</p> <p>3 of discipline or counselling for having obtained records</p> <p>4 through this unofficial channel?</p> <p>5 A I don't recall having that conversation</p> <p>6 with anybody in the higher chain of command.</p> <p>7 Q You've gotten commendations at the</p> <p>8 Cincinnati Police Department, haven't you?</p> <p>9 A Yes, I have.</p> <p>10 Q And one of them was for being a team</p> <p>11 player, correct?</p> <p>12 A Yes.</p> <p>13 Q And you received that commendation or</p> <p>14 approbation after the investigation of Diondre Winstead,</p> <p>15 correct?</p> <p>16 A Sir, I don't recall what investigation I</p> <p>17 got it after.</p> <p>18 Q Well, the record will reflect, but you</p> <p>19 were involved in the investigation of Diondre Winstead,</p> <p>20 correct?</p> <p>21 A Sir, I have been involved in an</p> <p>22 investigation involving Officer Winstead, yes.</p> <p>23 Q Do you recall the basic facts of that</p> <p>24 particular investigation?</p> <p>25 A That is -- my understanding is it is</p>	<p style="text-align: right;">Page 69</p> <p>1 A Yes.</p> <p>2 MR. GAGE: And I will direct my client to</p> <p>3 confirm, to be sure if we're going to discuss an</p> <p>4 investigation, let's not rely on opposing counsel's</p> <p>5 representation that it's closed.</p> <p>6 If you're aware of an investigation that</p> <p>7 he is asking about, that it is, in fact, closed,</p> <p>8 then --</p> <p>9 BY MR. CROSKERY:</p> <p>10 Q Of course. You are aware that the</p> <p>11 investigation was closed, right?</p> <p>12 A I'm not 100-percent aware that that</p> <p>13 investigation is closed, no, I'm not.</p> <p>14 MR. GAGE: I will want her to --</p> <p>15 MR. CROSKERY: I'm relying on my</p> <p>16 understanding.</p> <p>17 MR. GAGE: I also don't know anything</p> <p>18 about whether it's closed. So I would want to take</p> <p>19 a break to see. If you have any documentation</p> <p>20 indicating that it's closed?</p> <p>21 MR. CROSKERY: Let's go off the record</p> <p>22 for a second.</p> <p>23 (Whereupon, the deposition was recessed at</p> <p>24 11:30 a.m.)</p> <p>25 (Whereupon, the deposition was reconvened at</p>

<p style="text-align: right;">Page 70</p> <p>1 11:43 a.m.)</p> <p>2 BY MR. CROSKERY:</p> <p>3 Q Is it true that you sat in on Jason</p> <p>4 Cotterman and Richard Sulfsted's trial?</p> <p>5 A Yes.</p> <p>6 Q For the entire trial?</p> <p>7 A I don't know if it was the entire trial.</p> <p>8 From the time that I -- when I got transferred to IIS, or</p> <p>9 Internal, they had me observe the trial.</p> <p>10 Q When you say they had you observe it, do</p> <p>11 you mean your supervisor told you --</p> <p>12 A Correct.</p> <p>13 Q -- to sit in on it?</p> <p>14 A Correct.</p> <p>15 Q Do you remember which supervisor it was?</p> <p>16 A I don't recall.</p> <p>17 Q What was the purpose of your sitting in</p> <p>18 on the trial?</p> <p>19 A Every criminal trial or criminal incident</p> <p>20 that we have involving one of our employees, we observe the</p> <p>21 trial or the Court case, we observe it.</p> <p>22 Q When you say we, you're talking about</p> <p>23 Internal?</p> <p>24 A Internal does, correct.</p> <p>25 Q Okay. And you took notes during the</p>	<p style="text-align: right;">Page 72</p> <p>1 A No. I did a Subpoena from October 22nd</p> <p>2 through the 30th.</p> <p>3 Q Correct. And you did the Subpoena in</p> <p>4 November of 2015, November 2nd?</p> <p>5 A Yes.</p> <p>6 Q Okay. And it was about an incident that</p> <p>7 had happened sometime before, particularly on October 22nd,</p> <p>8 correct?</p> <p>9 A Between October 22nd and October 30th,</p> <p>10 yes.</p> <p>11 Q That's what you asked for, the actual</p> <p>12 incident was, according to your information on Page 1, the</p> <p>13 actual incident was on October 22nd of 2015. Do you see</p> <p>14 that, bottom of Page 1?</p> <p>15 A That is when the interview with the</p> <p>16 Pension Board guy was, yes.</p> <p>17 Q All right. So having clarified that, was</p> <p>18 there still an open investigation on this aggravated menacing</p> <p>19 at the time of the trial?</p> <p>20 A This aggravated menacing happened after</p> <p>21 the trial.</p> <p>22 Q Wasn't the trial in March of 2016?</p> <p>23 A I don't know. I don't recall.</p> <p>24 Q We can agree at least from your Exhibit</p> <p>25 here, that the incident that you were asked to investigate</p>
<p style="text-align: right;">Page 71</p> <p>1 trial?</p> <p>2 A No.</p> <p>3 Q Did the trial have any relevance to the</p> <p>4 investigation that you ended up doing on aggravated menacing?</p> <p>5 A What do you mean relevance?</p> <p>6 Q Well, did you use anything that you</p> <p>7 obtained from the trial in your investigation, your</p> <p>8 subsequent investigation?</p> <p>9 A No, the investigation --</p> <p>10 Q Right.</p> <p>11 A -- that I was involved in had to do with</p> <p>12 the threat, the threats that were made to the Pension Board</p> <p>13 guy.</p> <p>14 Q I understand that. And that</p> <p>15 investigation was subsequent to the trial, I understand, or</p> <p>16 was it?</p> <p>17 A I think it was after the trial.</p> <p>18 Q Well, your Subpoena was in --</p> <p>19 A November.</p> <p>20 Q -- November of 2015, and the trial was in</p> <p>21 March of 2016, correct?</p> <p>22 A I don't know. This -- this incident --</p> <p>23 Q Right. The incident that you</p> <p>24 investigated took place in November of 2015, or at least you</p> <p>25 were doing a Subpoena about it in November of 2015, correct?</p>	<p style="text-align: right;">Page 73</p> <p>1 was an incident that took place on October 22nd of 2015?</p> <p>2 A Correct.</p> <p>3 Q And you didn't sit in on the trial before</p> <p>4 you were assigned to Internal Investigations, correct?</p> <p>5 A Correct. I was assigned to Internal in</p> <p>6 September of '15.</p> <p>7 Q All right.</p> <p>8 A And that was one of the first things that</p> <p>9 I did while I was there.</p> <p>10 Q But there was no trial in March of 2015,</p> <p>11 because you wouldn't have sat in on a trial in March of</p> <p>12 2015 -- what I'm telling you is the trial was March of 2016;</p> <p>13 isn't that right?</p> <p>14 A I don't know that answer.</p> <p>15 Q Do you believe that the trial took place</p> <p>16 before this incident involving aggravated menacing?</p> <p>17 A Yes.</p> <p>18 Q All right. Now, you had indicated to me</p> <p>19 that you went to this FBI friend that had formerly been in</p> <p>20 the Cincinnati Police Department, a Mr. Warner, but I'm</p> <p>21 curious as to why you went to him at all, because isn't it</p> <p>22 true that the Cincinnati Police Department routinely obtains</p> <p>23 military records?</p> <p>24 A Sir, I don't know that answer.</p> <p>25 Q Well, don't -- don't they run military</p>

<p style="text-align: right;">Page 74</p> <p>1 records on every recruit?</p> <p>2 A I do not know.</p> <p>3 Q Let me show you what's marked as Exhibit</p> <p>4 23. I will represent to you that this is -- it was obtained</p> <p>5 by my client from the National Personnel Records Center,</p> <p>6 Exhibit 23, and it gives the list from the National Personnel</p> <p>7 Records Center people that have inquired.</p> <p>8 Now, first of all, can you agree with me</p> <p>9 that this shows a request from the Cincinnati Police</p> <p>10 Department, a background investigation and copy of the</p> <p>11 DD-214, was sent out on January 16th, 2003?</p> <p>12 A Yes, it says that.</p> <p>13 MR. GAGE: I'm sorry --</p> <p>14 Q Did you ask anybody --</p> <p>15 MR. GAGE: I'm sorry, which date did you</p> <p>16 ask her about?</p> <p>17 MR. CROSKERY: If you look at the second</p> <p>18 line down, it states on January 16th, 2003.</p> <p>19 MR. GAGE: Oh, I see.</p> <p>20 MR. CROSKERY: A request from the</p> <p>21 Cincinnati Police Department for the background</p> <p>22 investigation.</p> <p>23 BY MR. CROSKERY:</p> <p>24 Q But you would agree with me that there is</p> <p>25 no request listed on this form anywhere from the FBI for his</p>	<p style="text-align: right;">Page 76</p> <p>1 Q You also did not ask Matt DeBlough</p> <p>2 whether or not the HIPAA laws had been complied with in</p> <p>3 obtaining those records, correct?</p> <p>4 A Yeah. No, I didn't ask anybody about</p> <p>5 HIPAA.</p> <p>6 Q Do you know what HIPAA is?</p> <p>7 A Yes, sir. I'm familiar with what HIPAA</p> <p>8 is.</p> <p>9 Q I thought you might be. So you've</p> <p>10 probably gone through the process of obtaining authorizations</p> <p>11 to get HIPAA information before, haven't you?</p> <p>12 A I have.</p> <p>13 Q But that didn't happen in this case,</p> <p>14 true?</p> <p>15 A True.</p> <p>16 Q So just so it's clear on the record, I</p> <p>17 understand that you told me that you did not use any</p> <p>18 information directly that you obtained from the records,</p> <p>19 other than just transferring all the records to your</p> <p>20 supervisor, correct?</p> <p>21 MR. GAGE: Objection. Can you clarify</p> <p>22 which records you're referring to?</p> <p>23 Q I will try to. You were not part of</p> <p>24 writing the final report to the Chief?</p> <p>25 A I did not write the final report to the</p>
<p style="text-align: right;">Page 75</p> <p>1 records, correct?</p> <p>2 A Correct.</p> <p>3 Q And there is no subsequent request from</p> <p>4 the Cincinnati Police Department, true?</p> <p>5 A You mean after the January 16th one?</p> <p>6 Q Correct.</p> <p>7 A Correct.</p> <p>8 Q Are you familiar with the Privacy Act?</p> <p>9 A What Privacy Act, just in general?</p> <p>10 Q Privacy Act 1974, the one that you sign</p> <p>11 the forms for all the time, that says in order to obtain</p> <p>12 certain private records, that an authorization is needed?</p> <p>13 A Yeah. I'm familiar with it.</p> <p>14 Q All right. You would agree with me that</p> <p>15 you didn't make any efforts to get Privacy Act information</p> <p>16 signed by Jason Cotterman prior to obtaining the records that</p> <p>17 you got from the FBI, correct?</p> <p>18 A No, I did not.</p> <p>19 Q And you have no information that states</p> <p>20 that the FBI complied with the Privacy Act of 1974 with</p> <p>21 regard to those records, true?</p> <p>22 A I don't have that information, sir.</p> <p>23 Q You didn't ask Matt DeBlough whether or</p> <p>24 not the Privacy Act had been complied with, correct?</p> <p>25 A Correct.</p>	<p style="text-align: right;">Page 77</p> <p>1 Chief.</p> <p>2 Q And as far as you recall, you didn't give</p> <p>3 input on the final report to the Chief, correct?</p> <p>4 A I did not write the final report. I do</p> <p>5 not recall giving input on the final report.</p> <p>6 Q When you conveyed the records to the</p> <p>7 supervisor, do you recall anything of what you told him about</p> <p>8 the records?</p> <p>9 A Sir, I don't recall. I mean, this was</p> <p>10 four years ago. I don't --</p> <p>11 Q I'm asking for your best recollection.</p> <p>12 A I do not recall.</p> <p>13 Q Do you recall discussing in any way the</p> <p>14 mechanism by which they were obtained?</p> <p>15 A No, I do not recall, and I think I</p> <p>16 already answered that a couple of times. I don't recall</p> <p>17 telling anyone how I got them.</p> <p>18 Q And you don't recall ever being asked by</p> <p>19 anyone in the Cincinnati Police Department how you got them,</p> <p>20 true?</p> <p>21 A True.</p> <p>22 MR. CROSKERY: All right. I think I'm</p> <p>23 about finished. Let's go off the record for just a</p> <p>24 minute.</p> <p>25 (Whereupon, the deposition was recessed at</p>

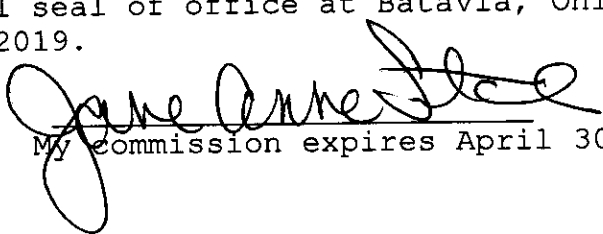
<p style="text-align: right;">Page 78</p> <p>1 11:53 a.m.)</p> <p>2 (Whereupon, the deposition was reconvened at</p> <p>3 11:54 a.m.)</p> <p>4 BY MR. CROSKERY:</p> <p>5 Q Ma'am, if you wanted to obtain records</p> <p>6 pertaining to a suspect from the University of Cincinnati</p> <p>7 Hospital, tell me how you would go about doing it.</p> <p>8 A I would either get consent from them, or</p> <p>9 I could get -- write a Court Order.</p> <p>10 Q Why would you need consent from the</p> <p>11 suspect?</p> <p>12 A What are you referring to? For what kind</p> <p>13 of records?</p> <p>14 Q Medical records.</p> <p>15 A To get consent from them to look at their</p> <p>16 medical records for whatever I'm investigating.</p> <p>17 Q Sure. And you would present them with a</p> <p>18 form to sign; is that right?</p> <p>19 A Correct. For medical records, yes.</p> <p>20 Q And why would you get the consent for</p> <p>21 medical records?</p> <p>22 A So I can look at them.</p> <p>23 Q Why couldn't you look at them anyway?</p> <p>24 MR. GAGE: Objection.</p> <p>25 Q Wouldn't you need the consent form or a</p>	<p style="text-align: right;">Page 80</p> <p>1 CHANGES AND SIGNATURE</p> <p>2 PAGE/LINE CHANGE REASON</p> <p>3 _____</p> <p>4 _____</p> <p>5 _____</p> <p>6 _____</p> <p>7 _____</p> <p>8 _____</p> <p>9 _____</p> <p>10 _____</p> <p>11 _____</p> <p>12 _____</p> <p>13 _____</p> <p>14 _____</p> <p>15 _____</p> <p>16 _____</p> <p>17 _____</p> <p>18 _____</p> <p>19 _____</p> <p>20 _____</p> <p>21 I, MICHELLE LONGWORTH, have read the foregoing</p> <p>22 deposition and hereby affix my signature that same is true</p> <p>23 and correct, except as noted above.</p> <p>24 _____</p> <p>25 MICHELLE LONGWORTH</p>
<p style="text-align: right;">Page 79</p> <p>1 Court Order just to obtain the records to start with?</p> <p>2 A Medical records?</p> <p>3 Q Yes.</p> <p>4 A Yes.</p> <p>5 Q So how are military records different?</p> <p>6 A When I asked for confirmation on</p> <p>7 regarding if he was a sniper or had Special Ops, I asked for</p> <p>8 the military records.</p> <p>9 I didn't ask for anything -- or I -- to</p> <p>10 see if we could confirm it through a military record. I</p> <p>11 never asked anybody for medical records.</p> <p>12 MR. CROSKERY: All right. I have nothing</p> <p>13 further. You've got the right to review this and</p> <p>14 make sure that everything is accurate, if it is</p> <p>15 transcribed, which it will be, or you can waive</p> <p>16 that right.</p> <p>17 MR. GAGE: She will read.</p> <p>18 MR. CROSKERY: She is reading, I'm</p> <p>19 ordering. We are off the record.</p> <p>20 MS. BISSINGER: I will get a copy, too.</p> <p>21</p> <p>22</p> <p>23 (DEPOSITION WAS CONCLUDED AT 11:57 A.M.)</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 81</p> <p>1 CERTIFICATE</p> <p>2 STATE OF OHIO)</p> <p>3) SS:</p> <p>4 COUNTY OF CLERMONT)</p> <p>5</p> <p>6 I, Jane Anne Fitch, the undersigned, a duly</p> <p>7 qualified and commissioned Notary Public within and for the</p> <p>8 State of Ohio, do hereby certify that before the giving of</p> <p>9 the aforesaid deposition, the said MICHELLE LONGWORTH, was by</p> <p>10 me, a Notary Public within and for the State of Ohio, first</p> <p>11 duly sworn to depose the truth, the whole truth and nothing</p> <p>12 but the truth; that the foregoing deposition was given at the</p> <p>13 said time and place and was taken in all respects pursuant to</p> <p>14 agreement of counsel hereinbefore set forth; that the</p> <p>15 deposition was taken in stenotype by me, and transcribed into</p> <p>16 typewritten form under my supervision; that the transcribed</p> <p>17 deposition is to be submitted to the witness for her</p> <p>18 examination and signature; that I am neither relative,</p> <p>19 attorney, nor employee of any party or their counsel and have</p> <p>20 no interest in the result of this pending action.</p> <p>21 IN WITNESS WHEREOF, I have hereunto set my</p> <p>22 hand and official seal of office at Batavia, Ohio this ____</p> <p>23 day of _____, 2019.</p> <p>24 _____</p> <p>25 My commission expires April 30, 2021</p>

C E R T I F I C A T E

STATE OF OHIO)
) SS:
COUNTY OF CLERMONT)

I, Jane Anne Fitch, the undersigned, a duly qualified and commissioned Notary Public within and for the State of Ohio, do hereby certify that before the giving of the aforesaid deposition, the said MICHELLE LONGWORTH, was by me, a Notary Public within and for the State of Ohio, first duly sworn to depose the truth, the whole truth and nothing but the truth; that the foregoing deposition was given at the said time and place and was taken in all respects pursuant to agreement of counsel hereinbefore set forth; that the deposition was taken in stenotype by me, and transcribed into typewritten form under my supervision; that the transcribed deposition is to be submitted to the witness for her examination and signature; that I am neither relative, attorney, nor employee of any party or their counsel and have no interest in the result of this pending action.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal of office at Batavia, Ohio this 24th day of September 2019.


My commission expires April 30, 2021

FITCH REPORTING, INC.

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